

AMENDED IN SENATE AUGUST 19, 2014
AMENDED IN SENATE JULY 1, 2014
AMENDED IN ASSEMBLY MAY 28, 2014
AMENDED IN ASSEMBLY MAY 23, 2014
AMENDED IN ASSEMBLY APRIL 10, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1897

Introduced by Assembly Member Roger Hernández

February 19, 2014

An act to add Section 2810.3 to the Labor Code, relating to private employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1897, as amended, Roger Hernández. Labor contracting: client liability.

Existing law regulates the terms and conditions of employment and establishes specified obligations of employers to employees. Existing law prohibits a person or entity from entering into a contract for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, if the person or entity knows or should know that the contract or agreement does not include sufficient funds for the contractor to comply with laws or regulations governing the labor or services to be provided.

This bill would require a client employer to share with a labor contractor all civil legal responsibility and civil liability for *all workers*

supplied by that labor contractor for the payment of wages, the obligation to provide a safe work environment, as specified, and the failure to obtain valid workers' compensation coverage. The bill would define a client employer as a business entity that obtains or is provided workers to perform labor or services within the usual course of business from a labor contractor, except as specified. The bill would define a labor contractor as an individual or entity that supplies workers, either with or without a contract, to a client employer to perform labor or services within the client employer's usual course of business and would except from this definition specified nonprofit, labor, and motion picture payroll services organizations. The bill would specify that it does not prohibit client employers and labor contractors from mutually contracting for otherwise lawful remedies for violations of its provisions by the other party. The bill would require a client employer or labor contractor to provide to a requesting enforcement agency or department, and make available for copying, information within its possession, custody, or control required to verify compliance with applicable state laws. The bill would authorize the Labor Commissioner, the Division of Occupational Safety and Health, and the Employment Development Department to adopt necessary regulations and rules to administer and enforce the bill's provisions. The bill would provide that waiver of its provisions is contrary to public policy, void, and unenforceable. The bill would prohibit its provisions from being interpreted to impose liability in specified circumstances.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2810.3 is added to the Labor Code, to
2 read:
3 2810.3. (a) As used in this section:
4 (1) "Client employer" means a business entity, regardless of its
5 form, that obtains or is provided workers to perform labor or
6 services within its usual course of business from a labor contractor.
7 "Client employer" does not include a business entity with a
8 workforce of less than 25 workers, including those hired directly
9 by the client employer and those obtained from, or provided by,
10 any labor contractor, and five or fewer workers supplied by a labor
11 contractor at any given time. "Client employer" does not include

1 the state or any political subdivision of the state, including any
2 city, county, city and county, or special district.

3 (2) “Labor” has the same meaning provided by Section 200.

4 ~~(2)~~

5 (3) “Labor contractor” means an individual or entity that
6 supplies, either with or without a contract, a client employer with
7 workers to perform labor ~~or services~~ within the client employer’s
8 usual course of business. “Labor contractor” does not include any
9 of the following:

10 (A) A bona fide nonprofit, community-based organization that
11 provides services to ~~low-wage~~ workers.

12 (B) A bona fide labor organization or apprenticeship program
13 or hiring hall operated pursuant to a collective bargaining
14 agreement.

15 (C) A motion picture payroll services company as defined in
16 subparagraph (A) of paragraph (4) of subdivision (f) of Section
17 679 of the Unemployment Insurance Code.

18 ~~(3)~~

19 (4) “Wages” has the same meaning provided by Section 200
20 and all sums payable to an employee or the state based upon any
21 failure to pay wages, as provided by law.

22 ~~(4)~~

23 (5) “Worker” does not include an employee who is exempt from
24 the payment of an overtime rate of compensation for executive,
25 administrative, and professional employees pursuant to wage orders
26 by the Industrial Welfare Commission described in Section 515.

27 ~~(5)~~

28 (6) “Usual course of business” means the regular and customary
29 work of a business, performed within or upon the premises or
30 worksite of the client employer.

31 (b) A client employer shall share with a labor contractor all civil
32 legal responsibility and civil liability for all *workers supplied by*
33 *that labor contractor for all of the following:*

34 (1) The payment of ~~wages to workers provided by a labor~~
35 ~~contractor.~~ *wages.*

36 (2) The obligation to provide a safe work environment under
37 the provisions of Division 5 (commencing with Section 6300).

38 (3) Failure to secure valid workers’ compensation coverage as
39 required by Section 3700.

1 (c) At least 30 days prior to filing a claim against a client
2 employer for violations covered by this section, a worker or his
3 or her representative shall notify the client employer of violations
4 under subdivision (b).

5 (d) Neither the client employer nor the labor contractor may
6 take any adverse action against any worker for providing
7 notification of violations or filing a claim.

8 (e) The provisions of subdivision (b) are in addition to, and shall
9 be supplemental of, any other theories of liability or requirement
10 established by statute or common law.

11 (f) This section does not prohibit a client employer from
12 establishing, exercising, or enforcing by contract any otherwise
13 lawful remedies against a labor contractor for liability created by
14 acts of a labor contractor.

15 (g) This section does not prohibit a labor contractor from
16 establishing, exercising, or enforcing by contract any otherwise
17 lawful remedies against a client employer for liability created by
18 acts of a client employer.

19 (h) Upon request by a state enforcement agency or department,
20 a client employer or a labor contractor shall provide to the agency
21 or department any information within its possession, custody, or
22 control required to verify compliance with applicable state laws.
23 Upon request, these records shall be made available promptly for
24 inspection, and the state agency or department shall be permitted
25 to copy them. This subdivision does not require the disclosure of
26 information that is not otherwise required to be disclosed by
27 employers upon request by a state enforcement agency or
28 department.

29 (i) The Labor Commissioner may adopt regulations and rules
30 of practice and procedure necessary to administer and enforce the
31 provisions of subdivisions (b) and (h) that are under his or her
32 jurisdiction.

33 (j) The Division of Occupational Safety and Health may adopt
34 regulations and rules of practice and procedure necessary to
35 administer and enforce the provisions of subdivisions (b) and (h)
36 that are under its jurisdiction.

37 (k) The Employment Development Department may adopt
38 regulations and rules of practice and procedure necessary to
39 administer and enforce the provisions of subdivisions (b) and (h)
40 that are under its jurisdiction.

1 (l) A waiver of this section is contrary to public policy, and is
2 void and unenforceable.

3 (m) This section shall not be interpreted to impose individual
4 liability on a homeowner for labor or services received at the home
5 or the owner of a home-based business for labor or services
6 received at the home.

7 (n) This section shall not be interpreted to impose liability on
8 a client employer for the use of ~~a bona fide~~ an independent
9 contractor *other than a labor contractor* or to change the definition
10 of independent contractor.

11 (o) *This section shall not be interpreted to impose liability on*
12 *the following:*

13 (1) *A client employer that is not a motor carrier of property*
14 *based solely on the employer's use of a third-party motor carrier*
15 *of property with interstate or intrastate operating authority to ship*
16 *or receive freight.*

17 (2) *A client employer that is a motor carrier of property*
18 *subcontracting with, or otherwise engaging, another motor carrier*
19 *of property to provide transportation services using its own*
20 *employees and commercial motor vehicles, as defined in Section*
21 *34601 of the Vehicle Code.*

22 (3) *A client employer that is a cable operator, as defined by*
23 *Section 8350 of the Public Utilities Code, based upon its*
24 *subcontracting with a company to build, install, maintain, or*
25 *perform repair work utilizing the employees and vehicles of the*
26 *subcontractor if the name of the subcontractor is visible on*
27 *employee uniforms and vehicles.*